

THIS LEASE AGREEMENT made in duplicate as of the ____ day of November, 2023.

BETWEEN:

THE CITY OF FREDERICTON, a Local Government under and by virtue of the *Local Governance Act*, SNB 2017, c.18, located at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5 (hereinafter called the “Lessor”)

OF THE FIRST PART

AND

PWTRANSIT CANADA LTD., incorporated under the *Business Corporations Act* with its head office at 1041 Great Street, Prince George, BC, V2N 2K8, hereinafter called the “Lessee”)

OF THE SECOND PART

(each a “Party”, collectively the “Parties”)

WHEREAS the Lessee desires to lease the buses listed in Schedule A (the “Buses”) from the Lessor in order to provide the Services outlined in the Agreement entered into by the Parties dated November 14, 2023 with respect to para transit services (the “Para Transit Agreement”);

AND WHEREAS the Lessor is the owner of the Buses and is willing to lease the Buses to the Lessee;

NOW THEREFORE in consideration of the terms and conditions and mutual covenants and agreements set out herein, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Lessor and the Lessee agree as follows:

1. LEASE

- 1.1 The Lessor agrees to lease to the Lessee and the Lessee agrees to lease from the Lessor, the Buses together with any accessories (open payment box and fare box) and repair and replacement parts affixed thereto;
- 1.2 The Parties acknowledge and agree that the terms and conditions of this Lease Agreement are in addition and supplemental to the Para Transit Agreement.
- 1.3 The Lessee agrees to pay the Lessor One Dollar (\$1.00) per bus per year and such payment shall be the lease charges in respect of the Buses.

2. TERM/TERMINATION

- 2.1 The term of this Lease Agreement shall commence on January 8, 2024, and will continue until the expiry or termination of the Para Transit Agreement, unless terminated earlier in accordance with the terms and conditions of this Lease Agreement.
- 2.2 If for any reason the required insurance lapses, is not fully maintained or renewed, or coverage is denied, the Lessee’s right to use and operate the Buses shall be terminated immediately without any further notice from the Lessor.

- 2.3 The Lease Agreement may also be terminated by the Lessor in accordance with Section 3.
- 2.4 The Lease Agreement may also be terminated by the Parties in accordance with Section 15.13.

3. DEFAULT

- 3.1 Notwithstanding Section 2, the Lessor may provide the Lessee with thirty (30) days written notice of an event of default as defined below, to correct the default. The Lessee acknowledges and agrees that the Lessor has the right to terminate this Lease Agreement immediately if the Lessee does not correct the default to the satisfaction of the Lessor within the notice period. An event of default means: (a) if the Lessee fails to observe and perform any of the terms and conditions of this Lease Agreement or (b) if the Lessee uses the Buses unreasonably or abusively, in the opinion and discretion of the Lessor acting reasonably, resulting in damages to the Buses or are an abnormal reduction of the life of the Buses.

4. USE

- 4.1 The Lessee shall only be entitled to use the Buses to perform the Services set out in the Para Transit Agreement, including bus driver training, and for no other purpose whatsoever.
- 4.2 The Lessor shall provide the Buses to the Lessee no later than January 8, 2024, however one bus shall be made available to the Lessee for training purposes at a mutually agreed upon date and time.
- 4.3 The Lessee shall not use or permit the use of any bus: (a) for any unlawful purpose; (b) for any commercial purpose such as delivery of goods; (c) by an unlicensed driver or a person whose license is suspended; or (d) in a way that causes cancellation or suspension of insurance or causes any manufacturer's warranty to become void.
- 4.4 If the Buses are lost or damaged, the Lessee will provide the Lessor with prompt written notice of such loss or damage and will, if the Buses are repairable, put or cause the Buses to be put in a state of good repair, appearance, and condition.
- 4.5 In the event of total loss of the Buses, the Lessee will provide the Lessor with prompt written notice of such loss and will replace the Buses with encumbrance free busses. The Lessee shall select the model, type and configuration in consultation with the Lessor's Transit Manager in order to provide the Services outlined in the Para Transit Agreement.

5. INSURANCE

- 5.1 The Lessee shall, at its own expense, insure the Buses in accordance with the terms and requirements of the Para Transit Agreement prior to taking possession of the Buses.
- 5.2 Further to Section 5.1, the Lessee shall also at its own expense obtain and maintain for the Term, or Renewal Term, an All Risk Physical Damage insurance coverage with a deductible of not more than \$5,000.00.
- 5.3 The Lessee shall, at its own expense, adhere to any legislative requirements and directives of the Lessor with respect to registering the Buses prior to taking possession of the Buses.
- 5.4 The Lessee and Lessor agree to execute and deliver the required documents to ensure that the registration of the Buses include the names of the Lessee and the Lessor to enable the

Lessee to obtain the required insurance for the Buses as outlined in Section 5.1.

5.5 Upon request of the Lessor, the Lessee shall assign to the Lessor any money paid under their insurance coverage.

6. OWNERSHIP

6.1 The Parties acknowledge and agree that title to and ownership of the Buses shall at all times be and remain in the name of the Lessor and the Lessee shall have no right of property therein, except the right to use the Buses in accordance with the terms of this Lease Agreement.

6.2 The Lessee shall not encumber the Buses or allow the Buses to be encumbered or pledge the Buses as security in any manner.

7. OPERATING COSTS

7.1 The Lessee shall, with the exception of any costs expressly provided for in the Para Transit Agreement, pay any and all costs associated with the Buses, including without limiting the generality of the foregoing, the cost of fuel, oil, license, vehicle repairs and maintenance including motor vehicle inspection fees.

8. ASSUMPTION OF RISK

8.1 The Lessee shall assume all risk and liability for the Buses, including the use and operation thereof during the term of the Lease Agreement.

9. INDEMNIFICATION

9.1 The Lessee shall indemnify and hold harmless the Lessor, its officers, directors, employees, councillors, agents, representatives, officials, successors and assigns from and against any and all claims, actions, suits, executions, demands, or other proceedings of any kind or nature, and all loss, liability, judgments, costs, charges, damages, liens and expenses (including legal fees) of any nature whatsoever and howsoever caused ("Losses") arising out of or resulting from:

- (a) the Buses, including without limitation to installation, possession, use, operation or return of the Buses;
- (b) any act, omission, failure or negligence of the Lessee, or any of its employees, servants, agents, or subcontractors, in the performance of this Agreement, including without limitation, any injury or death to persons, or loss of or damage to property, related to or occasioned by the operation of the Buses;
- (c) the death of or bodily injury to any employee, customer, agent, business invitee, visitor or other person, to the extent caused by the negligence or willful misconduct of the Lessee or any Lessee personnel or Lessee subcontractor, related to or occasioned by the operation of the Buses;
- (d) the damage, loss or destruction of any real or tangible personal property (excluding data) to the extent caused by the negligence or willful misconduct of the Lessee or any Lessee personnel, related to or occasioned by the operation of the Buses; and

- (e) any acts performed by or on behalf of the Lessee beyond the authority of the Lessee under the terms of this Lease Agreement;

collectively, "Indemnified Claim(s)". Notwithstanding the foregoing, the indemnification obligations of the Lessee under this Section 9.1 do not apply to the extent that the Indemnified Claim arises out of acts or omissions of the Lessor that are caused solely and directly by, or are as a result of, the negligence of the Lessor.

10. INSPECTION

- 10.1 The Lessor shall have the right to inspect the Buses at any time during the term of the Lease Agreement.

11. ALTERATION

- 11.1 The Lessee shall not alter or add to or allow any other party to alter or add to the Buses in any way without prior written approval of the Lessor. Any alterations or additions to the Buses which are approved by the Lessor shall become and remain the property of the Lessor.
- 11.2 The Lessee shall not permit any advertising to be posted on the exterior or interior of the Buses, save and except for any that are approved by the Lessor in writing.

12. ADVERTISING

- 12.1 The Lessee shall not use the name of the Lessor or City of Fredericton Transit in any advertising or promotional material or media release without the prior written consent of the Lessor, which may be arbitrarily withheld.
- 12.2 The Lessee shall allow the Lessor and any transit advertising vendor contracted by the Lessor access to all Buses to install and remove advertising material.
- 12.3 At the direction of the Lessor, the Lessee shall install and remove interior passenger notices and signage.
- 12.4 The Lessee acknowledges and agrees that all advertisements are subject to the Lessor's consent prior to being installed. The Lessee shall also comply with the requirements of the *Official Languages Act*, SNB 2002, c. O-0.5, as amended, that pertain to the Lessor as they relate to communications and services prescribed by Regulation 2002-63, as amended, in both official languages.
- 12.5 The Lessee is responsible for repairing any damage to a bus that the Lessor deems resulted from the installation or removal of advertising material by the Lessee.
- 12.6 The Lessee shall not publish, release, disclose to the media, press, public or a third party any advertising or promotional material without the consent of the Lessor.

13. WARRANTIES

- 13.1 The Lessee acknowledges that the Lessor makes no warranties, either express or implied, as to any matter whatsoever, including without limiting the generality of the foregoing, including any implied warranties of merchantability, the condition of the Buses nor their fitness for any particular purpose.

14. SURRENDER

- 14.1 Upon termination of this Lease Agreement, the Lessee shall immediately surrender and return the Buses to the Lessor.

15. GENERAL

- 15.1 **Sections, Headings and Interpretation:** The division of this Lease Agreement into sections and the insertion of headings are for convenience of reference only and do not affect its interpretation. Except where the context requires otherwise, references to the terms “herein,” “hereof,” “hereunder” and similar expressions refer to this Lease Agreement as a whole, and not to any specific section or schedule.
- 15.2 **Severability/ Partial Invalidity:** If any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, it shall be deemed to be severed from this Agreement, and the remaining terms and conditions shall nevertheless remain in full force and effect.
- 15.3 **Amendment:** Any amendment or modification of this Lease Agreement shall have no force or effect unless it is in writing and signed by duly authorized representatives of the Parties .
- 15.4 **Assignment:** The Lessee shall not assign this Lease Agreement or any of its rights or obligations hereunder or subcontract the performance of any of the Services without the prior written consent of the Lessor, which consent may be withheld by the Lessor, in its sole and absolute discretion.
- 15.5 **Waiver:** No term or provision of this Lease Agreement, and no breach of this Lease Agreement by the Lessee, shall be deemed to be waived or excused by the Lessor unless such waiver is in writing and signed by the Lessor. The waiver by the Lessor of any breach of a term or provision of this Lease Agreement shall not be or be deemed to be a waiver of any continuing or subsequent breach by the Lessee of the same or any other term or provision of this Lease Agreement.
- 15.6 **Disputes:** If a dispute arises between the Lessor and the Lessee arising out of or relating to this Lease Agreement, or the subject matter hereof, the Lessor and the Lessee agree that they shall each make all reasonable efforts to resolve any such dispute on a timely basis through amicable negotiations. Disputes shall promptly be referred by each Party to their respective senior management representatives who have the authority to resolve and settle any such disputes on their behalf. In the event that such representatives cannot resolve the dispute within ten (10) days or such longer period as the Parties may agree in writing, either Party may elect, upon giving prior written notice to the other Party, to resolve the matter through mediation or arbitration by a mutually acceptable mediator or arbitrator in accordance with the *Arbitration Act*, SNB, 2014, c. 100, as amended or litigation proceedings in the courts of the Province of New Brunswick.
- 15.7 **Contra Proferentem Rule Not Applicable:** Should any provision of this Lease Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it is agreed that both Parties, directly or through their agents, have participated in the preparation hereof.

15.8 **Liens/Charges/Fines:** The Lessee, at its own expense, shall keep the Buses free from all fines, levies, liens and encumbrances at all times.

The Lessee shall also pay all of the fines imposed by any government authority on the Buses, or the operator thereof, and shall indemnify and hold the Lessor harmless from any and all fines and penalties associated with the use or operation of the Buses during the term in violation of any law or regulation.

15.9 **Enurement:** This Lease Agreement shall enure to the benefit of and be binding on the Lessor and on the successors and permitted assigns of the Lessee.

15.10 **Counterparts:** This Lease Agreement may be signed by the Lessor and the Lessee in one or more counterparts (in original or electronic form), each of which when signed and delivered will be deemed an original, but all of which together will constitute one and the same instrument; however, this Lease Agreement will be of no force or effect until executed by both Parties. Executed signature pages delivered by facsimile or electronic mail will be deemed for all purposes to be original counterparts of this Lease Agreement.

15.11 **Governing Law:** The Parties acknowledge and agree this Lease Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the Province of New Brunswick and any federal laws of Canada applicable therein. The Parties submit to the exclusive jurisdiction of the courts of the Province of New Brunswick, that is, any claim or dispute with respect to or in relation to this Lease Agreement shall be determined by a court of competent jurisdiction within the Province of New Brunswick.

15.12 **Other:** The Parties acknowledge and agree that they have had the opportunity to seek independent legal advice or to have this Lease Agreement reviewed by their respective legal counsel.

15.13 **Option:** Notwithstanding Section 1, the Parties acknowledge and agree that the Lessee may purchase any of the Buses from the Lessor during the term, at fair market value, as determined by an independent appraisal, or at a price mutually agreed upon by the Parties. The Parties acknowledge and agree that this Lease Agreement shall continue to be in force until such time as all Buses have been purchased.

15.14 **Further Assurances:** The Parties agree to execute and deliver all such further documents and instruments, and do or cause to be done all such acts and things, as either Party may reasonably consider necessary to evidence the intent and meaning of this Lease Agreement.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
PARTIES TO SIGN ON THE FOLLOWING PAGE**

SCHEDULE A

The Buses

Unit Description	Serial Number	UNIT NUMBER
2012 CHEV/ELDORADO DIALABUS	1GB6G5BG4C1193415	8122
2014 CHEV/ELDORADO DIALABUS	1GB6G5BG2E1198678	8142
2020 CHEV PARATRANSIT BUS	1HA6GUBG2LN005260	8201

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. THAT I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. THAT the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. THAT the signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. THAT the Mayor and City Clerk are officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
 City of Fredericton, in the County)
 of York and Province of New)
 Brunswick, this ____ day of)
 November 2023.)

_____)
 A Commissioner of Oaths)
 Being a Solicitor)

_____)
 Jennifer Lawson

PROVINCE OF ALBERTA

CALGARY METROPOLITAL REGION

AFFIDAVIT OF CORPORATE EXECUTION

I, Greg J. Nichols of the City Calgary, Province of Alberta, **MAKE OATH AND SAY AS FOLLOWS:**

1. That I hold the office of President, Transit & Motorcoach Divisions, with Pacific Western/STA Group of Companies including PWTransit Canada Ltd., (hereinafter called the "Corporation") and I am authorized to make this affidavit and have personal knowledge of the matters sworn to herein.
2. That the seal affixed to the foregoing instrument is the seal of the Corporation and was affixed to the instrument by order of the board of directors of the Corporation.
3. That the signature "Greg J. Nichols" subscribed to the foregoing instrument is my signature.
4. The President, Transit & Motorcoach Divisions is the officer of the Corporation duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Calgary, in the Province)
of Alberta, this _____ day of)
November 2023.)
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_____)
A Commissioner of Oaths)
Being a Solicitor)

Greg J. Nichols